

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

THE AGAVE PROJECT LLC, d/b/a)	
THORNTAIL, and JOEL VANDENBRINK,)	No. 23-1984
INDIVIDUAL,)	
Plaintiff,)	[PROPOSED]
v.)	
HOST MASTER / 1337 SERVICES LLC, a)	TEMPORARY RESTRAINING
ST. KITTS and NEVIS COMPANY, and a)	ORDER AND ORDER
DOE,)	AUTHORIZING ALTERNATE
)	SERVICE AND EXPEDITED
)	DISCOVERY AND REQUIRING
Defendants.)	DEFENDANTS TO SHOW CAUSE RE
)	PRELIMINARY INJUNCTION
)	
)	
)	
)	

This matter comes before the Court on Plaintiffs’ Motion for Temporary Restraining Order and Order Authorizing Alternative Service and Expedited Discovery and Requiring Defendants to Show Cause RE Preliminary Injunction (collectively the “Motion”). The Court, having reviewed the Complaint for Damages and Equitable Relief, the Motion and all supporting declarations and exhibits, and all other court papers filed in connection with the Motion, finds as follows and enters the following Order (the “Order”):

- 1) Plaintiffs have demonstrated they are entitled to immediate injunctive relief by

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1 establishing (a) they are likely to succeed on the merits of their one or more claims alleged
2 against Defendants, (b) they have and are suffering irreparable injury in the absence of an
3 injunction based on Defendants' publications on the Infringing Website
4 (thorntailhardagave.com) and Defamatory Websites (thorntailhardagave.com,
5 kompletedesignbuild.com, and anonimcard.com), (c) the balance of hardships weighs in
6 Plaintiffs' favor, and (d) the public interest favors granting injunctive relief.
7

8 2) With respect to the likelihood of success on the merits, Plaintiffs have demonstrated
9 that they are likely to succeed in showing:

- 10 a. Plaintiffs are the exclusive and beneficial owner of the distinctive trademark,
11 "Thorntail Hard Agave."
- 12 b. Defendants have registered "thorntailhardagave.com" in violation of
13 Plaintiff's trademark.
- 14 c. Defendants have registered "thorntailhardagave.com" in violation of the
15 Anticybersquatting Consumer Protection Act.
- 16 d. Defendants are actively using the "thorntailhardagave.com" domain and
17 mirror domains to publish false, defamatory, and malicious content about
18 Plaintiffs.
- 19 e. The content published by Defendants constitutes defamation against
20 Plaintiff VandenBrink.
- 21 f. The content published by Defendants constitutes business disparagement
22 against Plaintiff Thorntail.
- 23 g. The content published by Defendants constitutes tortious interference with
24 Plaintiffs' business expectancies.
- 25
- 26

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1 h. The content published by Defendants constitutes unfair competition under
2 RCW 19.86.020.

3 3) The continued publication of the content displayed on Defendants' websites will
4 result in immediate and irreparable injury to Plaintiffs' reputations, relationships with
5 prospective and current customers, goodwill, and negotiating positions if injunctive relief
6 is not granted.
7

8 4) The harm to Plaintiffs that would result if the Court were to deny immediate
9 injunctive relief outweighs any harm to Defendants' legitimate interests if the Court were
10 to grant such relief.

11 5) It is in the public's interest to protect Plaintiffs' trademark.

12 6) It is in the public's interest to enjoin publication of the false and defamatory content
13 of Defendants' websites.
14

15 7) With regard to alternative service by email and expedited discovery regarding
16 Defendant Doe's identity, Plaintiffs have provided evidence showing:

17 a. Doe has made efforts to conceal their identity, location, and address from
18 Plaintiffs, including using an anonymization service domiciled in a foreign
19 jurisdiction and using a registrar that has a history of non-compliance with
20 takedown orders that failed to publish the registrant's identity until mandated
21 by the Uniform Domain-Name Dispute-Resolution Policy ("UDRP")
22 process.
23

24 b. Host Master 1337 has made efforts to conceal any business address where it
25 may be personally served by only listing a P.O. box address in their
26 registration and failing to respond to the UDRP proceedings.

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1 8) Given the time needed for necessary third-party discovery to determine Doe's
2 identity and Plaintiffs' need to effect service on an overseas Defendant, good cause
3 exists to extend temporary injunctive relief to 45 days or such time as the Court is
4 able to rule on Plaintiffs' motion for a preliminary injunction, if later.

5
6 THEREFORE, IT IS HEREBY ORDERED that the Defendants appear to show cause
7 on the _____ day of _____, 2024, at _____ a.m./p.m., or as
8 soon thereafter as counsel can be heard, in Courtroom _____, in the United States District
9 Court for the Western District of Washington, why the Court should not enter a preliminary
10 injunction enjoining and restraining Defendants, their officers, agents, servants, and
11 employees, and any persons in active concert or participation with them from:

- 12 1) Publishing content on the "thorntailhardagave.com" domain;
13
14 2) Publishing the disparaging content currently displayed on thorntailhardagave.com,
15 kompletedesignbuild.com, anonimcard.com or other mirror websites and
16 3) Publishing any other false or defamatory content regarding Plaintiffs on
17 thorntailhardagave.com, kompletedesignbuild.com, anonimcard.com or other
18 mirror websites.

19 **Temporary Restraining Order**

20 IT APPEARING to the Court that Defendants are reproducing, displaying, or
21 distributing defamatory content through an infringing domain and mirror websites and will
22 continue to do so unless restrained by order of the Court, it is hereby:

23
24 ORDERED that, pending the hearing on Plaintiffs' request for a preliminary
25 injunction, Defendants, their officers, agents, servants, and employees, and any persons in
26 active concert or participation with them (including third parties providing services used in

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1 connection with Defendants' operations, such as payment processors, domain registrars or
 2 hosts, Internet service providers, back-end service providers, affiliate program providers,
 3 web designers, search-engine or ad-word providers, and online business-to business selling
 4 platforms) having knowledge of this Order by service, actual notice, or otherwise are hereby
 5 temporarily restrained from committing any of the acts set forth in subparagraphs (a)(i)-(iii)
 6 above.
 7

8 ORDERED that this temporary restraining order shall remain in effect until the
 9 Court enters an order granting or denying a preliminary injunction or otherwise modifies,
 10 extends, or terminates this temporary restraining order.

11 **Alternative Service**

12 IT APPEARING to the Court that Plaintiffs have engaged in reasonable but fruitless
 13 efforts to uncover Defendants Doe's identity and locations, and that Defendant Host Master
 14 1337 has only provided a P.O. Box address, rather than a business address where personal
 15 service is possible, and it also appearing that Host Master 1337, being an internet-based
 16 organization, prefers communications via email, it is hereby:
 17

18 ORDERED, that Plaintiffs are authorized to effect alternate service of process on
 19 Host Master 1337 and Doe through the email address and P.O. Box address identified
 20 pursuant to a UDRP process instituted with the World Intellectual Property Organization:
 21

22 Email: whois+thorntailhardagave.com@njal.la;

23 Mailing Address: P.O. Box 590 Springates East,
 24 Government Road, Charlestown, Nevis, KN.

25 **Expedited Discovery**

26 IT APPEARING to the Court that Plaintiffs have engaged in reasonable but fruitless

1 efforts to uncover Defendants' identities and locations, and that third parties have
 2 information relevant to the identity of Defendant Doe it is hereby:

3 ORDERED that discovery by Plaintiffs may begin immediately by Plaintiffs
 4 providing actual notice, pursuant to subpoena or otherwise, of this Order to: (1) Defendants
 5 or their agents, servants, employees, confederates, or attorneys; (2) any persons acting in
 6 concert or participation with Defendants; or (3) any third-party service provider, including,
 7 without limitation, domain registrars Tucows Domains, Inc., Whois Privacy Corp., and
 8 Cloudflare Inc.; domain-name-registration privacy-protection services, providers of email
 9 services, back-end service providers, web designers, search-engine or ad-word providers,
 10 and any domain-name registries and registrars who have provided services for Defendants.
 11

12 ORDERED that any third party providing services in connection with any
 13 Defendant or Defamatory Website, including, without limitation, those listed above, shall,
 14 within five (5) days after receipt of such notice, provide copies of all documents and records
 15 in such person or entity's possession or control relating to: (1) the identities and addresses
 16 (physical and email) of Defendants or their agents, servants, employees, confederates, or
 17 attorneys and any persons acting in concert or participation with Defendants; and (2) the
 18 locations and identities of Defendants' operations, including, without limitation, identifying
 19 information associated with Defendants' Defamatory Websites.
 20
 21

22 **Plaintiffs' Duties**

23 IT IS ORDERED that Plaintiffs shall post a surety bond, cash, or a certified or
 24 attorney's check in the amount of one thousand dollars (\$1,000 USD) as security, which the
 25 Court determines is adequate for the payment of such damages as any person may be
 26

entitled to recover as a result of a wrongful seizure or restraint hereunder; and it is further.

ORDERED that Plaintiffs' counsel shall file with the Court within forty (45) calendar days after the date of this Order a declaration setting forth: (1) the date and means with which the Defendants were served with a copy of the Order, and (2) a description of the domain names and websites that were disabled.

Defendants' Response

IT IS ORDERED that Defendants' response papers, if any, shall be filed with the Court and served upon Plaintiffs' attorneys by delivering copies thereof to the offices of Lowe Graham Jones LLP, 1325 Fourth Avenue, Seattle, WA 98101, Attention: Mitchell D. West, before _____ a.m./p.m. on the _____ day of _____, 2024.

Any reply by Plaintiffs shall be filed and served by Plaintiffs by the _____ day of _____, 2024.

Defendants are hereby given notice that failure to attend the hearing scheduled above may result in immediate issuance of the requested preliminary injunction that shall extend to the conclusion of this litigation. Defendants shall be deemed to have actual notice of the issuance and terms of such preliminary injunction, and any act by them or any one of them in violation of any of the terms thereof may be considered and prosecuted as contempt of this Court.

Ordered this _____ Day of December 2023.

UNITED STATES DISTRICT COURT JUDGE

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1 *Presented by*

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